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**Federal Communications Commission**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Great Northern Radio, L.L.C.	)	File Number: EB-02-BS-301
	)	
Licensee of FM Station WWAY	)	NAL/Acct. No. 200332260004
Wilmington, Vermont	)	
Facility ID # 57728	)	FRN 0003-7598-42

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: May 19, 2003

By the District Director, Boston Office, Enforcement Bureau:

**INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Great Northern Radio, L.L.C. ("Great Northern"), licensee of FM radio station WWAY in Wilmington, Vermont, has apparently violated Section 73.1125(a) of the Commission's Rules ("Rules").<sup>1</sup> Specifically, we find Great Northern apparently liable for failing to maintain the requisite main studio presence. We conclude that Great Northern is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

**BACKGROUND**

2. On November 20, 2002, an agent from the Commission's Boston Office attempted an inspection at the WWAY main studio location at 127 Route 100 in West Dover, Vermont. There was no one present at the studio location, nor was there any evidence that anyone was there on a daily basis. On November 21, 2002, the agent went to the Rutland, Vermont studio of WEXP. WEXP and WWAY simulcast programming. Station personnel there stated that no one had been stationed at the West Dover studio for the past several months. That day the agent returned to Dover, accompanied by WEXP personnel, to complete the inspection of the unmanned WWAY station.

3. On December 10, 2002, the Boston Office sent an Official Notice of Violation ("NOV") to Great Northern for violations found during the November 20 and 21, 2002 inspection. The NOV issued to Great Northern included the non-compliance with Section 73.1125 of the Rules. On January 13, 2003, the Boston Office received a response to the NOV from Great Northern. In its response, Great Northern acknowledged the failure to comply with the main studio staffing requirement and detailed corrective action that they were taking.

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<sup>1</sup> 47 C.F.R. § 73.1125(a).

**DISCUSSION**

4. Section 503(b) of the Communications Act of 1934, as amended, ("Act"), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>2</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>3</sup> The term "repeated" means that the violation occurred on more than one day.<sup>4</sup>

5. Section 73.1125(a) of the Rules generally requires broadcast stations to maintain a main studio at one of the following locations: (i) within the station's community of license; (ii) at any location within the principal community contour of any AM, FM, TV broadcast station licensed to the station's community of license; or (iii) within twenty-five miles from the reference coordinates of the center of its community of license. The station's main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful management and staff presence at its main studio.<sup>5</sup> The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.<sup>6</sup> In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a 'home base.'"<sup>7</sup> On November 20 and 21, 2002, Great Northern had no management or staff presence during normal business hours at the main studio of station WWAY in violation of Section 73.1125(a) of the Rules.

6. Based on the evidence before us, we find that Great Northern Radio L.L.C. failed to maintain the required management and staff presence at the main studio of WWAY during normal business hours on November 20 and 21, 2002 in willful and repeated violation of Section 73.1125(a) of the Rules.

7. The Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd. 17087, 17113 (1997), *recon. denied*, 15

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<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd. 4387 (1991).

<sup>4</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>5</sup> See *Main Studio and Program Origination Rules*, 3 FCC Rcd. 5024, 5026 (1988).

<sup>6</sup> *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd. 3615, 3616 and n.2 (1992), clarified, 7 FCC Rcd. 6800 (1992).

<sup>7</sup> *Jones Eastern of the Outer Banks, Inc.*, 7 FCC Rcd. 6800, 6802 (1992).

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FCC Rcd. 303(1999) ("*Forfeiture Policy Statement*"),<sup>8</sup> sets the base forfeiture amount at \$7,000 for violation of the main studio rule.<sup>9</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act which include the nature, circumstance, extent and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>10</sup> Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, we believe that a seven thousand dollar (\$7,000) monetary forfeiture is warranted.

### ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules<sup>11</sup>, Great Northern Radio, L.L.C., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Sections 73.1125(a) of the Rules at station WWAY.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NAL, Great Northern Radio, L.L.C., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the NAL/Acct. No. 200332260004 and the FCC Registration Number 0003-7598-42.

11. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division and must include NAL/Acct. No. 200332260004.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C.

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<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> See, e.g., *American Broadcasting Educational Foundation*, 15 FCC Rcd. 8630, 8630 (Enf. Bur. 2000) (imposing a \$7,000 forfeiture for violation of the main studio rules).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>11</sup> 47 C.F.R. §§ 0.111, and 0.311.

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14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by certified mail return receipt requested, to Great Northern Radio, L.L.C., 70 Walnut Street, #411, Wellesley Massachusetts 02481. A copy is to be sent to David O'Neil, Manatt, Phelps and Phillips, LLP, 1501 M Street, Suite 700, Washington, District of Columbia 20005-1702.

FEDERAL COMMUNICATIONS COMMISSION

Vincent F. Kajunski  
District Director  
Boston Office

Enclosure: Attachment A, Condensed list of Small Entities

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<sup>12</sup> See 47 C.F.R. § 1.1914.